

DOCUMENT RESUME

02397 - [A1592572]

[Relief from Default Charges Involving Surplus Government Vehicles]. B-187094. June 1, 1977. 3 pp.

Decision re: Vincent J. Guest; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: General Services Administration.

Authority: P.P.R. 1-2.406-1. Wender Presses, Inc. v. United States, 343 F.2d. 961 (Ct. Cl. 1965). Saligman v. United States, 56 F. Supp. 505 (E.D. Penn., 1944). Kemp v. United States, 38 F. Supp. 568 (D. Md., 1941). B-181967 (1974).

Purchaser of surplus Government vehicles who neither paid for nor removed them was assessed liquidated damages of 20% of purchase price. Claim for relief from damages was denied where agency was not on notice of bidder's failure to appreciate he would be held liable for each high bid submitted.
(Author/DJM)

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A. Bowman
Proc II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-187094

DATE: June 1, 1977

MATTER OF: Vincent J. Guest

DIGEST:

Claim for relief from damages assessed in connection with sale of Government property is denied where agency was not on notice of bidder's failure to appreciate he would be held liable for each high bid submitted.

Mr. Vincent J. Guest seeks relief from default charges of \$1,079.40 assessed as a result of his failure to make timely payments under ten contracts awarded pursuant to Spot Bid Sale No. 3FWS-76-221, involving the sale of surplus Government vehicles by the General Services Administration (GSA), Philadelphia, Pennsylvania.

Acting under the mistaken impression that bidders had a right of refusal respecting vehicles for which they submitted high bids, Mr. Guest bid on a large number of vehicles and was subsequently awarded ten contracts. The aggregate price of the purchased vehicles was \$5,397. Mr. Guest neither made payment, nor removed the purchased property and was assessed liquidated damages of 20 percent of the purchase price, \$1,079.40, in accordance with the provisions of "Standard Form 114C, Sale of Government Property--General Sale Terms and Conditions (March 1974 ed.)," which states, in part:

"The Purchaser agrees that in the event he fails to pay for the property or remove the same within the prescribed period(s) of time, the Government at its election and upon notice of default shall be entitled to retain (or collect) as liquidated damages a sum equal to the greater of (a) 20% of the purchase price of the item(s) as to which the default has occurred, or (b) \$25, or the purchase price of such item(s) if the purchase price is less than \$25 * * *."

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The General Services Administration advises us that Standard Form 114C was conspicuously posted in the sales area and that the following statement was made by the GSA Property Marketing Specialist prior to the beginning of bid submission:

"You are cautioned to bid only on those items you are prepared to pay for and remove in accordance with the terms and conditions of this sale. We have had several instances recently where the successful bidder was under the false impression that he had the option of rejecting items awarded to him and that the rejected items would automatically go to the second high bidder. Such is not in accordance with the published terms and conditions of sale."

Notwithstanding the posted terms of sale and the cautionary instructions, Mr. Guest relied on erroneous advice and submitted bids for more items than he was prepared to make payment.

In general, a purchaser's unilateral mistake in bid will not excuse him from a contract subsequently awarded unless the contracting officer knew or should have known of the mistake. Corbin on Contracts § 610; Wender Presses, Inc. v. United States, 343 F.2d 961 (Ct. Cl. 1965); Saligman v. United States, 56 F. Supp. 505 (E.D. Penn., 1944); Kemp v. United States, 38 F. Supp. 568 (D. Md., 1941). There is no evidence in the present record to indicate that the contracting officer had actual knowledge of error. As to when the contracting officer should be charged with constructive notice of error, the test is one of reasonableness; whether under the facts of the case there were any factors which should have raised the possibility of error in the mind of the contracting officer. See Acme Refracting-Smelting Company, B-181967, August 20, 1974, 74-2 CPD 113. The possibility of error must be sufficient to reasonably require the contracting official to make inquiry, which inquiry would lead to the requisite knowledge. See Wender Presses, Inc. v. United States, *supra*.

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In the instant case, Mr. Guest's mistake relates solely to the consequences of being high bidder as to a number of items, not to the amount bid. The Government had no apparent reason to request verification of the bid prices (see Federal Procurement Regulation § 1-2.406-1 (2nd ed. 1964)), and in any event such verification would not have revealed a remediable mistake. Furthermore, GSA advises us that the making of multiple awards to a single individual is not unusual. According to the Determination and Findings made by GSA in this case;

"Dealers will register under their own names in lieu of the company name to preclude the public from knowing a dealer is at the sale * * *."

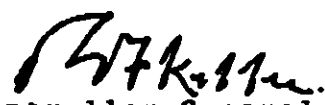
and,

"Multiple purchases by individuals at our vehicle sales are constant throughout the year, and 121 potential bidders had registered for this particular sale."

Thus, the fact that a number of awards were being made to an individual bidder was not sufficient to place the contracting officer on notice of a possible mistake here.

Finally, we note that the unclaimed vehicles were subsequently sold for \$1,028.21 less than the prices bid by Mr. Guest. In its report to our Office, GSA points out that, in view of the additional administrative expenses incurred on resale, the assessed damages closely approximate the actual damages suffered by the Government.

Under the circumstances, we believe that the assessment of liquidated damages of \$1,079.40 was proper and find no basis for granting the relief requested.


Deputy Comptroller General
of the United States